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DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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OCT 18 2002

Paper No. 20

In re Application of
Igor Palley *et al*
Application No. 08/747,471
Filed: November 12, 1996
Attorney Docket No. 30-3744CIP2CPA

: DECISION ON PETITION

This is a decision on the petition filed on October 7, 2002 by which petitioners request withdrawal of the holding of abandonment for failure to file a reply to the Office letter dated June 21, 2001. No fee is required for the petition.

The petition is dismissed.

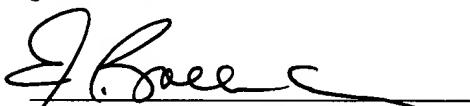
Petitioners allege that the application is not abandoned because their failure to file a reply to the Office letter in question was due to the fact that the Office letter in question was not received by petitioners. In support of this allegation, petitioners have included an evidentiary showing which appears to satisfy the **minimum** requirements for a showing of nonreceipt of Office correspondence, as established by the Notice published at 1156 OG 53 and discussed in MPEP 711.03(c).

However, it is noted that petitioners indicated that the Office letter in question was apparently not received because it was addressed to P.O. Box 31, Petersburg, VA instead of to Woods Edge Road, Colonial Heights, VA. This is taken to be a statement that petitioners' correspondence address has changed and differs from that which is presently of record, and which was of record since this application was filed. If the failure to receive the Office letter mailed on that date, which the record shows was properly addressed to the correspondence address of record, was as a result of petitioners' failure to file a proper request that the correspondence address of record be changed, then it would appear that relief under 37 CFR 1.181 (the basis for filing a petition to withdraw a holding of abandonment based upon Office error) is not appropriate, because the Office has not been shown to have committed an error which caused the abandonment. In this regard, attention is invited to MPEP § 601.03 with respect to the duty to promptly notify the Office of the change of address, and to MPEP § 711.03(c), at page 149, regarding the treatment of a petition pursuant to 37 CFR 1.137(a) when the record shows that the Office has not been notified of a change of correspondence address. It is submitted that just as a petition based upon unavoidable delay cannot be granted where no change of correspondence address was filed, a petition based upon error on the part of the Office cannot be granted when the failure to receive properly addressed correspondence was as a result of the failure to notify the Office of a change of correspondence address.

Therefore, petitioners are invited to file a renewed petition under 37 CFR 1.181, without fee, which provides evidence regarding the issues of when the correspondence address was changed to the address indicated in the body of the petition, what arrangements were in place respecting forwarding of mail to the new address with respect to the time period including June 26, 2001, whether the failure of correspondence to be forwarded in this instance appears to be an isolated circumstance. In addition, petitioners should file a separate paper directing that the correspondence address be changed to the new correspondence address as the correspondence address of record will not be changed based upon a request included in the petition. See 37 CFR 1.4(c). As a courtesy the instant decision is being mailed to the new correspondence address. The renewed petition must be filed within two months of the date of this decision. See 37 CFR

1.181(f). In the event that petitioners elect to file a renewed petition under 37 CFR 1.181, a terminal disclaimer will be required, because the instant petition was not timely filed under 37 CFR 1.181(f). See MPEP § 711.03(c), at page 700-139 for the appropriate language that must be included in the terminal disclaimer, which language is **not** the language which is used in a terminal disclaimer filed to overcome an obvious type double patenting rejection.

The application is being retained in Technology Center 3700 pending further action by petitioners.



E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

Attachment

Renee J. Rymarz
Allied Signal, Inc.
P. O. Box 31
Petersburg, VA 23804

cc: Honeywell International Inc.
15801 Woods Edge Road
Colonial Heights, VA 23834

ATTACHMENT

The petition and attached papers filed on October 7, 2002 (certificate of mailing dated October 1, 2002) have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process. The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS
ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.